

CHAPTER 75-02-04.1 CHILD SUPPORT GUIDELINES

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75-02-04.1-01. Definitions.

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3. "Children's benefits" means a payment, to or on behalf of a child of the person whose income is being determined, made by a government, insurance company, trust, pension fund, or similar entity, derivative of the parent's benefits or a result of the relationship of parent and child between such person and such child. Children's benefits do not mean benefits received from ~~means-tested~~ public assistance programs that are means tested or provided in the form of subsidy payments made to adoptive parents.

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5. a. "Gross income" means income from any source, in any form, but does not mean:

- (1) Benefits received from ~~means-tested~~ public assistance programs that are means tested such as temporary assistance for needy families, supplemental security income, and food stamps, or that are provided in the form of subsidy payments made to adoptive parents;

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7. "Net income" means total gross annual income less:

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- h. Employee expenses for special equipment or clothing required as a condition of employment or for lodging expenses incurred when engaged in travel required as a condition of employment (limited to ~~thirty~~ fifty dollars per night or actual documented costs, whichever is greater); and

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History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; _____, 2008.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-02. Determination of support amount - General instructions.

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7. Income must be sufficiently documented through the use of tax returns, current wage statements, and other information to fully apprise the court of all gross income. Where gross income is subject to fluctuation, particularly in instances involving self-employment regardless of whether the obligor is employed or self-employed, information reflecting and covering a period of time sufficient to reveal the likely extent of fluctuations must be provided.
8. Calculations made under this chapter are ordinarily based upon recent past circumstances because past circumstances are typically a reliable indicator of future circumstances, particularly circumstances concerning income. If circumstances that materially affect the child support obligation have changed in the recent past or are very likely to change in the near future, consideration may be given to the new or likely future circumstances.

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History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; _____, 2008.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-03. Determination of child support obligation - Split

custody. A child support obligation must be determined for the child or children in each parent's custody. The lesser obligation is then subtracted from the greater.

The difference is the child support amount owed by the parent with the greater

obligation. The offset of child support obligations in this section is for payment purposes only and must be discontinued for any month in which the rights to support of a child for whom the obligation was determined are assigned to a government agency as a condition of receiving public assistance.

History: Effective February 1, 1991; amended effective August 1, 2003; _____, 2008.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

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75-02-04.1-05. Determination of net income from self-employment.

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6. When less than three years were averaged under subsection 4, a loss resulting from the averaging may be used to reduce income that is not related to self-employment only if the loss is not related to a hobby activity and monthly gross income, reduced by one-twelfth of the average annual self-employment loss, equals or exceeds the greatest of:
 - a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage;
 - b. An amount equal to six-tenths of prevailing gross earnings of persons with similar work history and occupational qualifications who work in any place within one hundred miles [160.93 kilometers] of the obligor's actual place of residence; or
 - c. An amount equal to eighty percent of the obligor's greatest average gross monthly earnings, calculated without using self-employment losses, in any twelve consecutive months beginning on or after ~~thirty-~~

~~six~~ twenty-four months before commencement of the proceeding
before the court.

7. When three or more years were averaged under subsection 4, a loss resulting from the averaging may be used to reduce income that is not related to self-employment only if the loss is not related to a hobby activity, losses were calculated for no more than forty percent of the years averaged, and monthly gross income, reduced by one-twelfth of the average annual self-employment loss, equals or exceeds the greatest of:
- a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage;
 - b. An amount equal to six-tenths of prevailing gross earnings of persons with similar work history and occupational qualifications who work in any place within one hundred miles [160.93 kilometers] of the obligor's actual place of residence; or
 - c. An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, calculated without using self-employment losses, in any twelve consecutive months beginning on or after ~~thirty-~~
~~six~~ twenty-four months before commencement of the proceeding
before the court.

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9. Net income from self-employment is an example of gross income and is subject to the deductions from gross income set forth in subsection 7 of

section 75-02-04.1-01, to the extent not already deducted when
calculating net income from self-employment.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; _____, 2008.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

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75-02-04.1-07. Imputing income based on earning capacity.

1. For purposes of this section:
 - a. ~~"Community" includes any place within one hundred miles [160.93 kilometers] of the obligor's actual place of residence~~ "Earnings" includes in-kind income; and
 - b. An obligor is "underemployed" if the obligor's gross income from earnings is significantly less than ~~prevailing amounts earned in the community by~~ the statewide average earnings for persons with similar work history and occupational qualifications.
2. An obligor is presumed to be underemployed if the obligor's gross income from earnings is less than:

- a. Six-tenths of ~~prevailing amounts earned in the community by the~~
statewide average earnings for persons with similar work history
and occupational qualifications; or

...

- 3. Except as provided in subsections 4, 5, 6, 7, and ~~9~~ 10, gross income
based on earning capacity equal to the greatest of subdivisions a through
c, less actual gross earnings, must be imputed to an obligor who is
unemployed or underemployed.

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- b. An amount equal to six-tenths of ~~prevailing gross earnings in the
community of~~ the statewide average earnings for persons with
similar work history and occupational qualifications.
- c. An amount equal to ninety percent of the obligor's greatest average
gross monthly earnings, in any twelve consecutive months
beginning on or after ~~thirty-six~~ twenty-four months before
commencement of the proceeding before the court, for which
reliable evidence is provided.

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- 6. If an unemployed or underemployed obligor shows that employment
opportunities, which would provide earnings at least equal to the lesser of
the amounts determined under subdivision b or c of subsection 3, are

unavailable in the community within one hundred miles [160.93 kilometers]
of the obligor's actual place of residence, income must be imputed based
on earning capacity equal to the amount determined under subdivision a
of subsection 3, less actual gross earnings.

7. Monthly gross income based on earning capacity may not be imputed
under subsection 3 in an amount greater than one-half of one hundred
sixty-seven times the federal hourly minimum wage, less actual gross
earnings, if the obligor is under eighteen years of age or is under nineteen
years of age and enrolled in and attending high school.

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78. If an obligor fails, upon reasonable request made in any proceeding to
establish a child support obligation, to furnish reliable information
concerning the obligor's gross income from earnings, income based on
earning capacity equal to the greatest of subdivisions a through c of
subsection 3 must be imputed.

89. If the obligor fails, upon reasonable request made in any proceeding to
review a child support obligation, to furnish reliable information concerning
the obligor's gross income from earnings, and if that information cannot be
reasonably obtained from sources other than the obligor, income must be
imputed based on the greatest of:

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910. Notwithstanding subsections 4, 5, and 6, and 7, if an obligor makes a voluntary change in employment resulting in reduction of income, monthly gross income equal to one hundred percent of the obligor's greatest average monthly earnings, in any twelve consecutive months beginning on or after ~~thirty-six~~ twenty-four months before commencement of the proceeding before the court, for which reliable evidence is provided, less actual monthly gross earnings, may be imputed without a showing that the obligor is unemployed or underemployed. For purposes of this subsection, a voluntary change in employment is a change made for the purpose of reducing the obligor's child support obligation, taking into consideration the obligor's work history, education, health, age, stated reason for change in employment, likely employment status if the family before the court were intact, and any other relevant factors. The burden of proof is on the obligor to show that the change in employment was not made for the purpose of reducing the obligor's child support obligation.
11. Imputed income based on earning capacity is an example of gross income and is subject to the deductions from gross income set forth in subsection 7 of section 75-02-04.1-01.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; _____, 2008.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

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75-02-04.1-08.2. Equal physical custody - Determination of child

support obligation. A child support obligation must be determined as described in this section in all cases in which a court orders each parent to have equal physical custody of their child or children. Equal physical custody means each parent has physical custody of the child, or if there are multiple children, all of the children, exactly fifty percent of the time. A child support obligation for each parent must be calculated under this chapter assuming the other parent is the custodial parent of the child or children subject to the equal physical custody order. The lesser obligation is then subtracted from the greater. The difference is the child support amount owed by the parent with the greater obligation. Each parent is an obligee to the extent of the other parent's calculated obligation. Each parent is an obligor to the extent of that parent's calculated obligation. The offset of child support obligations in this section is for payment purposes only and must be discontinued for any month in which the rights to support of a child for whom the obligation was determined are assigned to a government agency as a condition of receiving public assistance.

History: Effective August 1, 2003; amended effective _____, 2008.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

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75-02-04.1-13. Application. The child support guideline schedule amount is ~~rebuttedly~~ rebuttably presumed to be the correct amount of child support in all child

support determinations, including both temporary and permanent determinations, and including determinations necessitated by actions for the support of children of married persons, actions seeking domestic violence protection orders, actions ~~arriving~~ arising out of divorce, actions arising out of paternity determinations, actions based upon a claim for necessities, actions arising out of juvenile court proceedings, interstate actions for the support of children in which a court of this state has the authority to establish or modify a support order, and actions to modify orders for the support of children. The fact that two or more such actions may be consolidated for trial or otherwise joined for convenient consideration of facts does not prevent the application of this chapter to those actions.

History: Effective February 1, 1991; amended effective January 1, 1995; _____, 2008.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667